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                      UNITED STATES DISTRICT COURT
                     FOR THE DISTRICT OF NEW JERSEY
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                                   CIVIL ACTION NUMBER:
 4
    IN RE:
            VALSARTAN, LOSARTAN,
                                   19-md-02875-RBK-TIV
    AND IRBESARTAN PRODUCTS
                                   DISCOVERY CONFERENCE
 6
    LIABILITY LITIGATION
 7
         Mitchell H. Cohen Building & U.S. Courthouse
 8
         4th & Cooper Streets
         Camden, New Jersey 08101
 9
         Wednesday, February 16, 2022
         Commencing at 4:00 p.m.
10
    BEFORE:
                             THE HONORABLE THOMAS I. VANASKIE
11
                              (Ret.), SPECIAL MASTER
12
    APPEARANCES:
13
         MAZIE SLATER KATZ & FREEMAN, LLC
         BY: ADAM M. SLATER, ESQUIRE
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         Roseland, New Jersey 07068
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         For the Plaintiffs
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         Philadelphia, Pennsylvania 19103
         For the Plaintiffs
19
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22
         For the Plaintiffs
23
                 Sharon Ricci, Official Court Reporter
                      sharon.ricci.usdcnj@gmail.com
24
                              267-249-8780
25
      Proceedings recorded by mechanical stenography; transcript
               produced by computer-aided transcription.
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    A P P E A R A N C E S (Continued):
 3
         DUANE MORRIS LLP
 4
         BY: SETH A. GOLDBERG, ESQUIRE
         30 South 17th Street
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         Philadelphia, Pennsylvania 19103
         For the Defendants, Prinston Pharmaceuticals,
 6
         Solco Healthcare U.S. LLC, and
         Zhejiang Huahai Pharmaceuticals Ltd.
 7
 8
         PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI LLP
              JASON M. REEFER, ESQUIRE
 9
         One Oxford Centre, 38th Floor
         Pittsburgh, Pennsylvania 15219
10
         For the Defendant, Mylan Pharmaceuticals, Inc.
11
12
    ALSO PRESENT:
13
         LORETTA SMITH, ESQUIRE
         Judicial Law Clerk to The Honorable Robert B. Kugler
14
         Larry MacStravic, Courtroom Deputy
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    (PROCEEDINGS held through Zoom conference before The Honorable
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    THOMAS I. VANASKIE, (Ret.) District Judge, at 4:00 p.m.)
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             JUDGE VANASKIE: Are we all set? I take it we are.
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    Please mute your microphones if you're not speaking.
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    should be a relatively brief Zoom session.
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             We have Sharon Ricci, our court reporter, present.
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    Thank you, Sharon.
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             And let's -- I think the only thing we need to talk
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    about is some scheduling matters. Are you addressing these
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    matters on behalf of the plaintiffs, Mr. Slater?
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             MR. SLATER: Hello, Judge. I think that Conlee
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    Whiteley is likely to at least at the outset. I may add
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    something, but hopefully not.
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             JUDGE VANASKIE: Okay. All right.
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             Ms. Whiteley?
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             MS. WHITELEY: Good afternoon, Your Honor. We did
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    have a meet and confer with the defendants yesterday and
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    discussed some alternate dates in order to free up the week for
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    the Daubert hearings, and I believe that we've been able to
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    accept the alternate dates, all but one, although I do think
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    that there's a date possible. We were just still trying to pin
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    it down sometime during the week of the 21st. So it's
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    plaintiffs' position that we could stay on track for Daubert,
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    and I don't know if that's an argument for another day with a
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    different Judge, but that's the update from the plaintiffs'
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    perspective.
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             JUDGE VANASKIE: All right. And who's speaking on
    behalf of the defense?
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             MR. REEFER: My name is Jason Reefer, I represent
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    Mylan Pharmaceuticals, and for purposes of our conversation
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    today, the defense.
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             JUDGE VANASKIE: Okay. And what's your view? Are
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    you --
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             MR. REEFER: I am sorry, Judge Vanaskie. I didn't
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    mean to interrupt you.
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             JUDGE VANASKIE: No. I was looking to get the defense
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    perspective on this matter.
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             Are you all in agreement on rescheduling the class
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    certification expert deps and moving forward for March 1st to
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    the 4th, I think it is?
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             MR. REEFER: Well, Judge, I think we're halfway in
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    agreement, and sometimes that's better than -- it's better than
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    we sometimes do.
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             So maybe it would help if we took a step back for a
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    moment and just sort of reoriented ourselves, because from the
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    defendants' perspective there are sort of two separate but
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    related issues that we wanted to discuss with the Court. And I
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    realize that the agenda statements were somewhat ambiguous.
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    think that was somewhat purposeful because the parties were
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    still engaging in a meet and confer through last night, so
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there was some uncertainty whether or not we would reach agreement on some or all of the issues.

So from the defendants' perspective, there does appear to be agreement with the plaintiffs that deadlines relating to the completion of class discovery, as well as the filing of responses to Rule 23 motions and Rule 702 class motions need to be set out, I believe, 14 to 21 days, depending on where the final experts slot in on the calendar. And so I think there's agreement among the parties for that much.

I think where we might not have agreement is from the defendants' perspective there -- it would be beneficial to the parties and the Courts if there were a brief continuance of the Rule 702 hearings, which are currently on calendar for March 1 through 4.

The reason for the defendants' position, Your Honor, is that as currently situated, the parties are to serve or exchange supplemental declarations on February 24th, and those declarations are to serve as a de facto direct examination of the proffered experts, and then those experts will be subject to cross-examination and then perhaps redirect at the time of the hearing.

You know, when you look at the calendar, Judge,
February 24 is next Thursday, March 1 is the following Tuesday,
which would mean that between disclosure of the supplemental
declarations and the potential beginning of the Daubert

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hearings, you have just two business days. So from the defendants' perspective, it would be beneficial to the orderly presentation of argument and evidence during the hearings if there were a continuance of those Rule 702 hearings until later in March or early April.
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So that's sort of the long and the short of it. To be clear, Ms. Whiteley communicated that the plaintiffs are not willing to join the request to continue the Rule 702 hearings, but there does seem to be agreement on the need to move the briefing deadlines and discovery deadlines for class certification.

JUDGE VANASKIE: All right. Thank you.

Ms. Whiteley?

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MS. WHITELEY: Yes, Your Honor. We did agree to move all of the dates, because they are staggered and they relate to one another, up to 14 days. If a deposition needs to be taken a day out of turn, I don't think it would mess up that schedule. It would be one of defendants' depositions of their experts and it shouldn't affect their ability to file their briefs. But that's our --

JUDGE VANASKIE: All right. And Judge Kugler has been made aware of the request to push back the dates for the Daubert hearings and has some flexibility on that score. I wanted to suggest the possibility of moving the hearings so that they would commence on March 28th and conclude by April

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          There may even be some more flexibility there too, but
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    not beyond April 1st. They have to be concluded by then.
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             Does that mess up everything if we were to push them
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    back now to the 28th to the 1st?
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             MR. SLATER: Hello, Your Honor. Adam Slater.
                                                            If I
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    could jump in for a second?
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             JUDGE VANASKIE: Certainly.
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             MR. SLATER: I'm going to be on a plane out of the
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    country on April 1st, I can tell you that. From the
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    plaintiffs' perspective, we're not really sure why the defense
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    is now asking for this continuance. Everybody has understood
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    what the deadlines were since Judge Kugler told them to us.
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    Everybody on our side has been structuring our schedules for
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    the entire month of March around these dates. We've gotten new
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    dates for depositions for some experts.
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             So we would have to do -- we would have to reengineer
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    our months basically. We've left these periods of time open
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    for the hearings. So the plaintiffs don't want to move these
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    dates because, again, we've relied on them and scheduled
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    ourselves. I can tell you, I'm going on April 1st early in the
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    morning out of the country on a vacation. My first time on an
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    airplane since COVID started, so I'm very excited about it.
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    But -- and I'm sure that other people have similar issues.
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             JUDGE VANASKIE: Yes, I have to confess, I just got
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    back from St. Thomas yesterday after four days there, so -- it
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    wasn't long, but it was nice.
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             MR. GOLDBERG: Your Honor, I --
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             JUDGE VANASKIE: Yes. Go ahead, Mr. Goldberg.
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             MR. GOLDBERG: I do think two points there are
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    important to point out. I think under the current schedule we
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    would have all of the expert depositions completed by March
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    28th. It looks like we'll have them done by March 25th. So if
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    we needed to move it up a day or two to accommodate Mr. Slater,
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    that would, I'm sure, be fine.
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             I do think a point about what Mr. Reefer was saying is
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    especially for those parties with foreign defendants, having a
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    day or two in between getting the declarations and doing the
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    Daubert hearing is really not enough time to make progress in
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    terms of communicating with our clients on these.
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             I do think the schedule that the parties agreed to in
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    terms of the class cert expert deps can be accomplished and it
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    will provide for an orderly flow of things to complete those
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    deps, do the Daubert hearing and then do the class
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    certification briefing.
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             JUDGE VANASKIE: All right. Thank you, Mr. Goldberg.
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             Anything else on this issue?
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             (No response.)
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             JUDGE VANASKIE: What I propose to do is to let Judge
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    Kugler know of the conversation that occurred on this
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    particular matter. As I said, I do understand that he has some
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flexibility between March 23rd and April 1st. Obviously, we wouldn't, Mr. Slater, interfere with your April 1st plans, but it may be that he will be inclined to have the hearing start around March 23rd and conclude by March 31st. But I can't promise that at this time. I think ultimately that's Judge Kugler's call to make.

But I did want you to know that he was aware of the
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But I did want you to know that he was aware of the request and had provided information indicating there is some flexibility there. But once he gets into April, his schedule is completely filled up, so it would have to be completed now by March 31st.

MR. HONIK: Your Honor, this is Mr. Honik. I think I have bad audio.

Can you hear me okay?

JUDGE VANASKIE: I can hear you fine.

MR. HONIK: Thank you, sir. Judge, at the risk of maybe underscoring something that may not have come up directly, part of the calculus in relying upon the earlier March dates has to do with the experts themselves. We're in the midst now of identifying what declarations we'll be preparing and serving and, of course, part of the calculus there is having those experts available.

So I just want to point out the obvious, that it's not often as simple as snapping one's fingers to have these experts available, and certainly we've been working under the

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assumption that it's going to be the first week in March.

That's point number one.

If we start as early as March 23rd, that's already going to interfere with an important deposition I'm taking of a key defense class expert on March 25th. So relying upon the first week of March, we have already moved certain depositions, very important ones, I dare say, to that third week in March, which may have to be further changed, further complicating the March schedule. So I just wanted to point that out to Your Honor as well.

JUDGE VANASKIE: All right. Well, I don't think there's anything that I can decide on this matter. I think ultimately that's Judge Kugler's decision to make.

I will ask Sharon if she can prepare the transcript from today's call so that we can get Judge Kugler's views.

Unless -- I know that I have Loretta Smith on this Zoom session. Unless she thinks that we should try to bring in Judge Kugler now.

THE LAW CLERK: In speaking with Judge Kugler today,

Judge Vanaskie, he was fine with your taking the lead on this,

unless you want him to join in the conversation.

I just have one thing I'd like to add to tell to the parties. Judge Kugler is actually flexible to March 1st -- excuse me, March 21st. So the week of March 21st all the way to March 31st he can shift some things and give you space, and

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that's the best he can do.

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If that will work for you, you guys will have to make decisions between you and among you, but that's what he can do. So think of March 21st.

MR. SLATER: Thank you. And, Judge, I can tell you -- it's Adam Slater -- we literally, based on the meet and confer, just rescheduled a bunch of defense experts to March 21, March 25, etcetera, so they wouldn't be packed around the schedule of dates.

JUDGE VANASKIE: Yeah. It may be that it's too late to adjust the Daubert hearings schedule. I -- go ahead.

Is that Mr. Goldberg?

MR. GOLDBERG: Your Honor, I do think we can go back to those original deposition dates. We had deposition dates set for March 3rd, we can go forward with that date. We had a deposition date set for February 27th, we can go with that date.

I don't think we are locked in. Just as we were able to shift some things today, I think we're happy to go back to the experts to see if we can work things around, and it sounds like Judge Kugler has flexibility to work some things around. These things don't have to happen necessarily on consecutive days or in one session.

But it really will afford for a more orderly process to have this Daubert hearing coming after these depositions,

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and we're happy to work with plaintiffs to try to find those dates.

MR. HONIK: Your Honor, I would point out it's two weeks away, and based on our conversations and reliance on the schedule we were given by the Court, if what we -- if we do what Seth is proposing, I, personally, for example, and this is just one lawyer, would have four depositions in the span of about seven days if we move them all back to the way they were. I mean, there are lots of humans involved in these depositions.

And I just think it's completely unworkable at this point to rejigger what Mr. Reefer said was our agreement.

We've moved things to the end of March for a reason and we did that to accommodate other aspects of our schedule. So it's not such an easy plug and play. And in as much as, you know, March is two weeks away, I just don't see that we can do it.

MR. GOLDBERG: We are -- I think what my understanding is, we, the defendants, may have an expert witness that cannot make it March 1st through 4th during the Daubert hearings, so we'll have to move some things around then.

But, you know, moving the Daubert hearing four or five weeks from now would give the parties enough time to find dates for these depositions. We were asked to do that before. Those dates are still good dates for many of these experts. They were on the schedule. Plaintiffs asked for different dates, we

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tried to accommodate those, and we can continue to try to accommodate those deposition dates.

MR. HONIK: Judge, I'm looking at the list. There are 18 witnesses, 18 experts that have to be taken in this span of time. We have worked really hard to this point to get them locked in. We have dates for all these people at this point that work, and we did it on reliance that March 1 through 4 would be the window to conduct the Daubert hearings. And that's only two weeks away.

So, in essence, Seth is proposing that we go completely back to the drawing board with multiple lawyers' schedules, with some instances the need to travel out of state -- not always, but some of these -- and I just think it's going to create a nightmare.

Mr. Reefer started the conference by saying we have agreement in part with the plaintiffs, and what he was referring to is we've now locked in the deposition dates for these people. And the only thing -- you know, it's not convenient, obviously, for Mr. Goldberg and some of the defendants to proceed on March 1 through 4, but we've known this now for a month from the Court. And I just -- I'm loathed to think of the upset that this will cause, not least because at the end of the month, you know, Mr. Slater is going out of town, a number of us have other travel plans, I'm supposed to be in front of the JPML at the end of March and I have to

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prepare for that.
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I'm really concerned at the level of disruption -even though, generally speaking, we all would like a little
more time to prepare everything, I don't know how we're going
to do 18 depositions in the timeframe we're talking about and
create a new four-day or three-day period for Daubert hearings.
I just think --

JUDGE VANASKIE: Yeah, I understand. I understand the problems facing both sides on this matter and I think all I can do or I think the prudent thing for me to do is to let Judge Kugler know of this discussion, have our court reporter prepare the transcript pronto so you get an answer as quickly as possible about whether the hearings will commence on the 1st and go through the 4th or will be adjusted somewhat. That's all I can say right now. All right?

MR. SLATER: Judge, I am sorry, if I could just add one thing just to make sure you recall.

JUDGE VANASKIE: Sure.

MR. SLATER: I know Judge Kugler also told us the 14th, 15th and 16th were set aside in case a witness couldn't appear that first week, so I just want to remind everybody that we do have those few days that Judge Kugler said if someone couldn't come March 1 to 4, that they could be presented those three days too. So it does give some more flexibilities to the parties.

That was already -- I had that on my calendar set aside. I think that's what Judge Kugler said, if someone couldn't come that first week, he could have the witnesses that can't come the first week come then as well. If that helps.

JUDGE VANASKIE: Yeah. Well, I think there is some flexibility. And maybe with that understanding, I would urge you, both sides, to continue to have a dialogue about what might be doable here in this window of time between March 1st and March 31st to both allow the depositions to be taken and the Daubert hearings to be conducted.

If you need time on the class certification papers, that part of it, the motion, the briefs, etcetera, that can always be adjusted, and the dates for the depositions likely can be adjusted.

I think that's about all we can accomplish right now. We understand both sides' concerns and they are substantial. When it comes to scheduling matters involving this many people, it gets really complex. And to adjust something just two weeks before the hearing is supposed to begin is difficult, we understand that, but all I can do right now is bring this matter to the attention of Judge Kugler. And you'll be hearing from him shortly. But in the meantime, if you all could reach some agreement on this, that would make the decision easier for all of us. All right? So I'd urge you to continue to have

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    dialogue. Okay.
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             Anything else for today for the good of the order?
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              (No response.)
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             JUDGE VANASKIE: All right. Thank you all very much.
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              (Matter adjourned at 4:29 p.m.)
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10
             I certify that the foregoing is a correct transcript
11
    from the record of proceedings in the above-entitled matter.
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13
    /S/ Sharon Ricci, RMR, CRR
    Official Court Reporter
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15
    February 16, 2022
         Date
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```

,	13:20, 14:23	April [8] - 6:5, 6:25,	changed [1] - 10:8	country [2] - 7:9, 7:21
/	4:00 [2] - 1:9, 3:2	7:2, 7:9, 7:20, 9:1,	CIVIL [1] - 1:3	course [1] - 9:21
/ S [1] - 16:13	4:29 [1] - 16:5	9:2, 9:9	class [8] - 4:13, 5:5,	court [2] - 3:6, 14:11
70 [1] 10.10	4th [4] - 1:8, 4:15,	argument [2] - 3:24,	5:6, 6:10, 8:16, 8:18,	Court [5] - 1:23, 4:22,
0	12:19, 14:14	6:3	10:5, 15:12	12:5, 13:21, 16:13
0	12.13, 14.14	aside [2] - 14:20, 15:2	clear [1] - 6:7	COURT [1] - 1:1
07068 [1] - 1:14	7	aspects [1] - 12:14	Clerk [1] - 2:13	Courthouse [1] - 1:7
08101 [1] - 1:8	,	assumption [1] - 10:1	CLERK [1] - 10:19	Courtroom [1] - 2:14
00101[1] 1.0	701 [1] - 1:21	attention [1] - 15:22	clients [1] - 8:14	Courts [1] - 5:12
1	70130 [1] - 1:21	audio [1] - 9:13		
,	702 [4] - 5:6, 5:13, 6:4,	available [2] - 9:22,	Cohen [1] - 1:7	COVID [1] - 7:22
1 [5] - 5:13, 5:23, 13:7,	6:8	9:25	coming [1] - 11:25	create [2] - 13:14, 14:6
13:20, 14:23	0.0		commence [2] - 6:25,	cross [1] - 5:20
103 [1] - 1:14	Α	aware [2] - 6:22, 9:7	14:13	cross-examination [1]
14 [2] - 5:7, 6:16	A		Commencing [1] - 1:9	- 5:20
14th [1] - 14:20	ability [1] - 6:19	В	communicated [1] -	CRR [1] - 16:13
15219 [1] - 2:9	able [2] - 3:19, 11:18	bad [1] - 9:13	6:7	current [1] - 8:5
15th [1] - 14:20	above-entitled [1] -		communicating [1] -	
16 [2] - 1:9, 16:15	16:11	based [2] - 11:6, 12:4 begin [1] - 15:20	8:14	D
16 [2] - 1.9, 16.15 16th [1] - 14:20	accept [1] - 3:20	0	complete [1] - 8:17	deve to 10:7
17th [1] - 14.20	accept [ग] - 3.20 accommodate [4] -	beginning [1] - 5:25	completed [2] - 8:6,	dare [1] - 10:7
• •	8:8, 12:14, 13:1,	behalf [2] - 3:10, 4:3	9:10	date [4] - 3:21, 11:15,
18 [3] - 13:4, 14:5	13:2	beneficial [2] - 5:11,	completely [3] - 9:10,	11:16, 11:17
1835 [1] - 1:17	accomplish [1] -	6:2	12:11, 13:11	Date [1] - 16:15
19-md-02875-RBK-	15:16	best [1] - 11:1	completion [1] - 5:5	dates [20] - 3:18, 3:20,
TIV [1] - 1:4	accomplished [1] -	better [2] - 4:17	complex [1] - 15:19	6:15, 6:22, 7:14,
19103 [2] - 1:18, 2:5	8:16	between [5] - 5:24,	complicating [1] -	7:15, 7:19, 9:19,
1st [12] - 4:14, 7:1,	ACTION [1] - 1:3	8:12, 9:1, 11:3, 15:9	10:8	11:9, 11:14, 12:2,
7:2, 7:4, 7:9, 7:20,	Adam [2] - 7:5, 11:6	beyond [1] - 7:2	computer [1] - 1:25	12:22, 12:24, 12:25,
9:1, 9:2, 10:23,	ADAM [1] - 1:13	board [1] - 13:11	computer-aided [1] -	13:2, 13:6, 13:17,
12:19, 14:13, 15:9	add [3] - 3:12, 10:22,	BOSICK [1] - 2:8	1:25	15:14 Dayshartana 2:10
2	14:16	brief [2] - 3:5, 5:12	concerned [1] - 14:2	Daubert [13] - 3:19,
2	addressing [1] - 3:9	briefing [2] - 6:10,	concerns [1] - 15:17	3:23, 5:25, 6:23,
2022 [2] - 1:9, 16:15	addressing [1] - 3.9 adjourned [1] - 16:5	8:19	conclude [2] - 6:25,	8:13, 8:18, 11:11,
2022 [2] = 1.9, 10.13 21 [2] = 5:7, 11:8	adjust [2] - 11:11,	briefs [2] - 6:20, 15:13	9:4	11:25, 12:19, 12:21,
21 st [4] - 3:22, 10:24,	15:19	bring [2] - 10:17,	concluded [1] - 7:2	13:8, 14:6, 15:11
11:4	adjusted [3] - 14:14,	15:21	conduct [1] - 13:8	days [8] - 5:7, 6:1,
23 [1] - 5:6	15:14, 15:15	Building [1] - 1:7	conducted [1] - 15:11	6:16, 7:25, 11:23,
23 [1] - 5.0 23rd [3] - 9:1, 9:4,	affect [1] - 6:19	bunch [1] - 11:7	confer [3] - 3:17, 4:25,	12:8, 14:22, 14:24
10:3		business [1] - 6:1	11:7	de [1] - 5:18
10.3 24 [1] - 5:23	afford [1] - 11:24	BY [5] - 1:13, 1:17,	CONFERENCE [1] -	deadlines [4] - 5:4,
24 [1] - 5.23 24th [1] - 5:17	afternoon [1] - 3:16	1:20, 2:4, 2:8	1:5	6:10, 7:12
24th [1] - 5:17 25 [1] - 11:8	agenda [1] - 4:23		conference [2] - 3:1,	decide [1] - 10:12
25 [1] - 11.6 25th [2] - 8:7, 10:5	agree [1] - 6:14	С	13:15	decision [2] - 10:13,
267-249-8780 [1] -	agreed [1] - 8:15	coloulus m: 0:40	confess [1] - 7:24	15:24
207-249-0700 [1] - 1:24	agreement [10] - 4:13,	calculus [2] - 9:18,	CONLEE [1] - 1:20	decisions [1] - 11:3
7.24 27th [1] - 11:16	4:17, 5:2, 5:4, 5:9, 5:10, 6:0, 12:12	9:21	Conlee [1] - 3:11	declarations [5] -
	5:10, 6:9, 12:12,	calendar [4] - 5:8,	consecutive [1] -	5:17, 5:18, 5:25,
28th [3] - 6:25, 7:4, 8:7	13:16, 15:24	5:13, 5:22, 15:1	11:22	8:12, 9:20
2900 [1] - 1:17	ahead [2] - 8:3, 11:11	Camden [1] - 1:8	continuance [3] -	Defendant [1] - 2:10
2	aided [1] - 1:25	Camp [1] - 1:21	5:12, 6: 4 , 7:11	Defendants [1] - 2:5
3	airplane [1] - 7:22	cannot [1] - 12:18	continue [4] - 6:8,	defendants [4] - 3:17,
30 [1] - 2:4	ALFANO [1] - 2:8	case [1] - 14:20	13:1, 15:8, 15:25	8:11, 12:18, 13:20
30[1] - 2.4 31st [4] - 9:4, 9:11,	allow [1] - 15:10	Centre [1] - 2:9	Continued [1] - 2:2	defendants' [6] - 4:21,
10:25, 15:10	ALSO [1] - 2:12	cert [1] - 8:16	convenient [1] - 13:19	5:3, 5:11, 5:15, 6:2,
38th [1] - 2:9	alternate [2] - 3:18,	certain [1] - 10:6	conversation [3] - 4:5,	6:18
3rd [1] - 11:15	3:20	certainly [2] - 7:7,	8:24, 10:21	defense [6] - 4:3, 4:6,
JIU [1] = 11.10	ambiguous [1] - 4:23	9:25	conversations [1] -	4:11, 7:10, 10:5,
4	AND [1] - 1:5	certification [4] - 4:14,	12:4	11:7
4	answer [1] - 14:12	6:11, 8:19, 15:12	Cooper [1] - 1:8	deposition [7] - 6:16,
4 [4] - 5:14, 13:7,	appear [2] - 5:3, 14:21	certify [1] - 16:10	correct [1] - 16:10	10:4, 11:14, 11:16,
.,,				

depositions [11] - 6:18, 7:15, 8:6, 10:6, 11:25, 12:7, 12:10, 12:23, 14:5, 15:10, 15:14 deps [3] - 4:14, 8:16, 8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3, 12:19	10:0 10:17
6:18, 7:15, 8:6, 10:6, 11:25, 12:7, 12:10, 12:23, 14:5, 15:10, 15:14 deps [3] - 4:14, 8:16, 8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	13:2, 13:17
11:25, 12:7, 12:10, 12:23, 14:5, 15:10, 15:14 deps [3] - 4:14, 8:16, 8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
12:23, 14:5, 15:10, 15:14 deps [3] - 4:14, 8:16, 8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
15:14 deps [3] - 4:14, 8:16, 8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
deps [3] - 4:14, 8:16, 8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
8:18 Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
Deputy [1] - 2:14 dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
dialogue [2] - 15:8, 16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [7] - 5:18 directly [7] - 9:18 disclosure [7] - 5:24 DISCOVERY [7] - 1:5 discovery [2] - 5:5, 6:10 discuss [7] - 4:22 discussed [7] - 3:18 discussion [7] - 14:11 disruption [7] - 14:2 District [7] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [7] - 15:9 done [7] - 8:7 down [7] - 3:22 drawing [7] - 13:11 DUANE [7] - 2:3 during [7] - 3:22, 6:3,	
16:1 different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
different [2] - 3:25, 12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	dialogue [2] - 15:8,
12:25 difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	16:1
difficult [1] - 15:20 direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	different [2] - 3:25,
direct [1] - 5:18 directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [2] - 3:22, 6:3,	12:25
directly [1] - 9:18 disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
disclosure [1] - 5:24 DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	direct [1] - 5:18
DISCOVERY [1] - 1:5 discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	directly [1] - 9:18
discovery [2] - 5:5, 6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	disclosure [1] - 5:24
6:10 discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	DISCOVERY [1] - 1:5
discuss [1] - 4:22 discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [2] - 3:22, 6:3,	discovery [2] - 5:5,
discussed [1] - 3:18 discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	6:10
discussion [1] - 14:11 disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	discuss [1] - 4:22
disruption [1] - 14:2 District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	discussed [1] - 3:18
District [1] - 3:2 DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	discussion [1] - 14:11
DISTRICT [2] - 1:1, 1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
1:1 doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	District [1] - 3:2
doable [1] - 15:9 done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	DISTRICT [2] - 1:1,
done [1] - 8:7 down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	doable [1] - 15:9
down [1] - 3:22 drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
drawing [1] - 13:11 DUANE [1] - 2:3 during [3] - 3:22, 6:3,	
DUANE [1] - 2:3 during [3] - 3:22, 6:3,	drawing [1] - 13:11
during [3] - 3:22, 6:3,	G
• • • • • • • • • • • • • • • • • • • •	
	• • • • • • • • • • • • • • • • • • • •

E

early [3] - 6:5, 7:20, 10:3 easier [1] - 15:24 easy [1] - 12:15 Eisenhower [1] - 1:14 end [3] - 12:13, 13:23, 13:25 engaging [1] - 4:25 entire [1] - 7:14 entitled [1] - 16:11 especially [1] - 8:11 **ESQUIRE** [6] - 1:13, 1:17, 1:20, 2:4, 2:8, 2:13 essence [1] - 13:10 etcetera [2] - 11:8, 15:13 evidence [1] - 6:3 examination [2] -5:18, 5:20 example [1] - 12:6 exchange [1] - 5:17

excited [1] - 7:22

excuse [1] - 10:24 expert [5] - 4:14, 8:6, 8:16, 10:5, 12:18 experts [12] - 5:8, 5:19, 6:19, 7:15, 9:19, 9:22, 9:24, 11:7, 11:20, 12:24, 13:4

F

facing [1] - 14:9

facto [1] - 5:18

few [1] - 14:22

file [1] - 6:19

filing [1] - 5:5

16:15

February [5] - 1:9,

5:17, 5:23, 11:16,

filled [1] - 9:10 final [1] - 5:8 fine [3] - 8:9, 9:15, 10:20 fingers [1] - 9:24 first [6] - 7:21, 10:1, 10:6, 14:21, 15:3, 15:4 five [1] - 12:21 flexibilities [1] - 14:24 flexibility [6] - 6:23, 7:1, 9:1, 9:9, 11:21, flexible [1] - 10:23 Floor[1] - 2:9 flow [1] - 8:17 following [1] - 5:23 FOR [1] - 1:1 foregoing [1] - 16:10 foreign [1] - 8:11 forward [2] - 4:14, 11:15 four [4] - 7:25, 12:7, 12:21, 14:6 four-day [1] - 14:6 free [1] - 3:18 FREEMAN [1] - 1:13

G

front [1] - 13:25

generally [1] - 14:3 given [1] - 12:5 GOLDBERG [5] - 2:4, 8:2, 8:4, 11:13, 12:17 Goldberg [4] - 8:3, 8:20, 11:12, 13:19 GOLOMB [1] - 1:16 GORDON [1] - 2:8 guys [1] - 11:2

Н

halfway [1] - 4:16

happy [2] - 11:19,

12:1

hard [1] - 13:5 Healthcare [1] - 2:6 hear [2] - 9:14, 9:15 hearing [8] - 5:21, 8:13, 8:18, 9:3, 11:25, 12:21, 15:20, 15:22 hearings [15] - 3:19, 5:13, 6:1, 6:3, 6:4, 6:8, 6:23, 6:24, 7:18, 11:11, 12:19, 13:8, 14:6, 14:13, 15:11 held [1] - 3:1 hello [2] - 3:11, 7:5 help [1] - 4:19 helps [1] - 15:5 HONIK [6] - 1:16, 1:17, 9:12, 9:16, 12:3, 13:3 honik [1] - 9:12 Honor [9] - 3:16, 5:15, 6:14, 7:5, 8:2, 9:12, 10:10, 11:13, 12:3

1

identifying [1] - 9:20

important [3] - 8:5,

HONORABLE [1] -

Honorable [2] - 2:13,

hopefully [1] - 3:13

humans [1] - 12:9

Huahai [1] - 2:6

1:10

3:1

10:4, 10:7 IN [1] - 1:4 Inc [1] - 2:10 inclined [1] - 9:3 indicating [1] - 9:8 **information** [1] - 9:8 instances [1] - 13:12 interfere [2] - 9:2, 10:4 interrupt [1] - 4:10 involved [1] - 12:9 involving [1] - 15:18 IRBESARTAN [1] -1:5 issue [1] - 8:21 issues [3] - 4:22, 5:2, 7:23

J

JASON [1] - 2:8

JERSEY [1] - 1:1 Jersey [2] - 1:8, 1:14 join [2] - 6:8, 10:21 JPML [1] - 13:25 Judge [26] - 3:2, 3:11, 3:25, 4:9, 4:16, 5:22, 6:21, 7:12, 8:23, 9:5, 9:16, 10:13, 10:15, 10:18, 10:19, 10:20, 10:23, 11:5, 11:21, 13:3, 14:10, 14:16, 14:19, 14:22, 15:2, 15:22 JUDGE [19] - 3:3, 3:14, 4:2, 4:7, 4:11, 6:12, 6:21, 7:7, 7:24, 8:3, 8:20, 8:23, 9:15, 10:11, 11:10, 14:8, 14:18, 15:6, 16:4

Jason [1] - 4:4

K

Judicial [1] - 2:13

jump [1] - 7:6

KANNER [1] - 1:20 KATZ [1] - 1:13 key [1] - 10:5 known [1] - 13:20 Kugler [13] - 2:13, 6:21, 7:12, 8:24, 10:18, 10:19, 10:23, 11:21, 14:11, 14:19, 14:22, 15:2, 15:22 Kugler's [3] - 9:6, 10:13, 10:15

L

larry [1] - 2:14 last [1] - 4:25 late [1] - 11:10 Law [1] - 2:13 LAW[1] - 10:19 lawyer [1] - 12:7 lawyers'[1] - 13:11 lead [1] - 10:20 least [2] - 3:12, 13:22 left [1] - 7:17 level [1] - 14:2 **LIABILITY** [1] - 1:6 likely [2] - 3:12, 15:14 list [1] - 13:3 literally [1] - 11:6 **LITIGATION** [1] - 1:6 LLC [3] - 1:13, 1:20, 2:6 LLP [2] - 2:3, 2:8 loathed [1] - 13:21 locked [3] - 11:18,

13:6, 13:17
look [1] - 5:22
looking [2] - 4:11,
13:3
looks [1] - 8:7
LORETTA [1] - 2:13
Loretta [1] - 10:16
LOSARTAN [1] - 1:4
Louisiana [1] - 1:21
Ltd [1] - 2:6

М

MacStravic [1] - 2:14

March [36] - 4:14, 5:13, 5:23, 6:5, 6:25, 7:14, 8:6, 8:7, 9:1, 9:4, 9:11, 9:19, 10:1, 10:3, 10:5, 10:6, 10:7, 10:9, 10:23, 10:24, 10:25, 11:4, 11:7, 11:8, 11:15, 12:13, 12:15, 12:19, 13:7, 13:20, 13:25, 14:23, 15:9, 15:10 Market [1] - 1:17 MASTER [1] - 1:11 Matter [1] - 16:5 matter [6] - 4:12, 8:25, 10:12, 14:9, 15:22, 16:11 matters [3] - 3:9, 3:10, 15:18 MAZIE [1] - 1:13 mean [3] - 4:10, 5:24, 12:9 meantime [1] - 15:23 mechanical [1] - 1:25 meet [3] - 3:17, 4:25, 11:6 mess [2] - 6:17, 7:3 microphones [1] - 3:4 midst [1] - 9:20 might [2] - 5:10, 15:9 Mitchell [1] - 1:7 moment[1] - 4:20 month [3] - 7:14, 13:21, 13:23 months [1] - 7:17 morning [1] - 7:21 **MORRIS** [1] - 2:3 motion [1] - 15:13 motions [2] - 5:6 move [6] - 6:9, 6:14, 7:18. 8:8. 12:8. 12:20 moved [2] - 10:6, 12:13 moving [3] - 4:14,

6:24, 12:21

United States District Court District of New Jersey

MR [17] - 3:11, 4:4, 4:9, 4:16, 7:5, 7:8, 8:2, 8:4, 9:12, 9:16, 11:5, 11:13, 12:3, 12:17, 13:3, 14:16, 14:19 MS [2] - 3:16, 6:14 multiple [1] - 13:11 mute [1] - 3:4 Mylan [2] - 2:10, 4:5

Ν

name [1] - 4:4 necessarily [1] - 11:22 need [5] - 3:8, 5:6, 6:9, 13:12, 15:12 needed [1] - 8:8 needs [1] - 6:16 NEW [1] - 1:1 new [2] - 7:14, 14:6 **New** [3] - 1:8, 1:14, 1:21 next [1] - 5:23 nice [1] - 8:1 night [1] - 4:25 nightmare [1] - 13:14 number [2] - 10:2, 13:24 **NUMBER** [1] - 1:3

0

obvious [1] - 9:23 obviously [2] - 9:1, 13:19 occurred [1] - 8:24 OF [1] - 1:1 Official [2] - 1:23, 16:13 often [1] - 9:24 once [1] - 9:9 One [1] - 2:9 one [8] - 3:20, 6:16, 6:18, 10:2, 10:22, 11:23, 12:7, 14:17 one's [1] - 9:24 ones [1] - 10:7 open [1] - 7:17 order [2] - 3:18, 16:2 orderly [3] - 6:2, 8:17, 11:24 original [1] - 11:14 Orleans [1] - 1:21 ourselves [2] - 4:20, 7:20 outset [1] - 3:12 Oxford [1] - 2:9

P

p.m [3] - 1:9, 3:2, 16:5

packed [1] - 11:8

P.C [1] - 1:16

papers [1] - 15:12 Parkway [1] - 1:14 part [4] - 9:18, 9:21, 13:16, 15:13 particular [1] - 8:25 parties [9] - 4:24, 5:9, 5:12, 5:16, 8:11, 8:15, 10:23, 12:22, 14:25 Pennsylvania [3] -1:18, 2:5, 2:9 people [4] - 7:23, 13:6, 13:18, 15:18 perhaps [1] - 5:20 period [1] - 14:6 periods [1] - 7:17 personally [1] - 12:6 perspective [7] - 4:1, 4:12, 4:21, 5:3, 5:11, 6.2 7.10 Pharmaceuticals [4] -2:5, 2:6, 2:10, 4:5 Philadelphia [2] -1:18, 2:5 PIETRAGALLO [1] -2.8 pin [1] - 3:21 Pittsburgh [1] - 2:9 Plaintiffs [3] - 1:15, 1:18, 1:22 plaintiffs [7] - 3:10, 5:4, 6:7, 7:18, 12:1, 12:25, 13:16 plaintiffs' [3] - 3:23, 3:25, 7:10 plane [1] - 7:8 plans [2] - 9:2, 13:24 play [1] - 12:15 plug [1] - 12:15 point [9] - 8:5, 8:10, 9:23, 10:2, 10:9, 12:3, 12:12, 13:5, 13:6 points [1] - 8:4 position [2] - 3:23, 5:15 possibility [1] - 6:24 possible [2] - 3:21, 14:13 potential [1] - 5:25 prepare [4] - 10:14, 14:1, 14:4, 14:11 preparing [1] - 9:21 PRESENT [1] - 2:12

present [1] - 3:6

presentation [1] - 6:3 presented [1] - 14:23 **Prinston** [1] - 2:5 problems [1] - 14:9 proceed [1] - 13:20 PROCEEDINGS [1] -3.1 proceedings [1] -16:11 Proceedings [1] -1:25 process [1] - 11:24 produced [1] - 1:25 **PRODUCTS** [1] - 1:5 proffered [1] - 5:19 progress [1] - 8:13 promise [1] - 9:5 pronto [1] - 14:12 propose [1] - 8:23 proposing [2] - 12:6, 13:10 provide [1] - 8:17 provided [1] - 9:8 prudent [1] - 14:10 purposeful [1] - 4:24 purposes [1] - 4:5 push [2] - 6:22, 7:3

Q

R

quickly [1] - 14:12

RASPANTI [1] - 2:8

reach [2] - 5:1, 15:23

really [6] - 7:10, 8:13,

11:24, 13:5, 14:2,

realize [1] - 4:23

reason [2] - 5:15,

record [1] - 16:11

recorded [1] - 1:25

redirect [1] - 5:20

4:9, 4:16

REEFER [4] - 2:8, 4:4,

Reefer [2] - 4:4, 13:15

reengineer [1] - 7:16

referring [1] - 13:17

rejigger [1] - 12:12

relate [1] - 6:15

related [1] - 4:22

relating [1] - 5:4

relatively [1] - 3:5

reliance [2] - 12:4,

relied [1] - 7:19

13.7

RE [1] - 1:4

15:19

12:13

relying [2] - 9:18, 10:5 remind [1] - 14:21 reoriented [1] - 4:20 reporter [2] - 3:6, 14:11 Reporter [2] - 1:23, 16:13 represent [1] - 4:4 request [3] - 6:8, 6:22, 9.8 rescheduled [1] - 11:7 rescheduling [1] -4:13 response [2] - 8:22, 16:3 responses [1] - 5:6 Ret [2] - 1:11, 3:2 Ricci [3] - 1:23, 3:6, 16:13 risk [1] - 9:16 RMR [1] - 16:13 Robert [1] - 2:13 Roseland [1] - 1:14 **RUBEN** [1] - 1:17 Rule [5] - 5:6, 5:13, 6:4, 6:8

12:14, 12:25 scheduled [1] - 7:19 13.12 scheduling [2] - 3:9, 15:18 score [1] - 6:23 second [1] - 7:6 seem [1] - 6:9 separate [1] - 4:21 serving [1] - 9:21 session [3] - 3:5, reefer [2] - 8:10, 12:12 10:17, 11:23 set [6] - 3:3, 5:7, 15:1 SETH [1] - 2:4 seven [1] - 12:8 3:7, 10:14, 16:13 @gmail.com[1] -1:23 short [1] - 6:6

shortly [1] - 15:23 side [1] - 7:13 sides [2] - 14:9, 15:8 sides' [1] - 15:17 similar [1] - 7:23 simple [1] - 9:24 situated [1] - 5:16 **SLATER** [8] - 1:13, 1:13, 3:11, 7:5, 7:8, 11:5, 14:16, 14:19 slater [1] - 3:10 **Slater** [5] - 7:5, 8:8, 9:2, 11:6, 13:23 slot [1] - 5:8 Smith [1] - 10:16 **SMITH** [1] - 2:13 snapping [1] - 9:24 Solco [1] - 2:6 someone [2] - 14:22, 15:2 sometime [1] - 3:22 sometimes [2] - 4:17, 4.18 somewhat [3] - 4:23, 4:24, 14:14 S 6:6 schedule [10] - 6:18, South [1] - 2:4

sorry [2] - 4:9, 14:16 sort [3] - 4:20, 4:21, sounds [1] - 11:20 8:5, 8:15, 9:9, 10:9, space [1] - 10:25 11:9, 11:11, 12:5, span [2] - 12:7, 13:4 speaking [4] - 3:4, 4:2, 10:19, 14:3 schedules [2] - 7:13, SPECIAL [1] - 1:11 St [1] - 7:25 **staggered** [1] - 6:15 start [2] - 9:3, 10:3 started [2] - 7:22, 13:15 see [2] - 11:20, 12:16 state [1] - 13:13 **statements** [1] - 4:23 **STATES** [1] - 1:1 serve [2] - 5:16, 5:18 stay [1] - 3:23 stenography [1] -1:25 step [1] - 4:19 still [3] - 3:21, 4:25, 11:15, 11:16, 14:20, 12:24 Street [3] - 1:17, 1:21, Seth [2] - 12:6, 13:10 2:4 Streets [1] - 1:8 **structuring** [1] - 7:13 Sharon [5] - 1:23, 3:6, subject [1] - 5:19 substantial [1] - 15:17 sharon.ricci.usdcnj suggest [1] - 6:24 Suite [1] - 1:17 supplemental [2] shift [2] - 10:25, 11:19 5:17, 5:24 supposed [2] - 13:24,